

**OFFICE OF THE GENERAL COUNSEL  
Division of Operations-Management**

**MEMORANDUM OM 12-28**

**January 18, 2012**

**TO:** All Regional Directors, Officers-in-Charge,  
and Resident Officers

**FROM:** Anne Purcell, Associate General Counsel

**SUBJECT:** Draft Revised Pleadings Manual

As part of a periodic update, a Committee<sup>1</sup> has revised and updated the pleadings manual. This revision will also facilitate creation of a NxGen template that permits insertion of various pleadings manual paragraphs. The draft revised pleadings manual is posted on the Insider at [this link](#). A [copy showing changes](#) is also available. Both documents can be found by going to the Insider and clicking on Case Processing and then on Manuals.

You are encouraged to use the draft pleadings manual now and to submit suggested changes and comments to Deputy Assistant General Counsel Dottie Wilson or any other member of the Committee by **March 9, 2012**. After comments are received and the manual is finalized, the revised manual will be available on the Insider and a copy of the manual will be provided to each office. The revised language will also be used to create a NxGen complaint template.

Because of the need to reformat the manual so that the pleadings can eventually be incorporated into NxGen and because of the length of time that has passed since the last update to the pleadings manual, the work involved in this project was significant. My sincere thanks to the members of the committee for the substantial time and effort they gave to this project.

Set forth below is a description of the changes which are divided into three types: global changes; changes in organization; and additional and revised language for specific pleadings.

**GLOBAL CHANGES**

The changes throughout the manual include the following:

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<sup>1</sup> The Committee members are Regional Director Ron Hooks, Regional Director Jonathan Kreisberg, Regional Director Marlin Osthus, Regional Attorney Anne Pomerantz, Deputy Regional Attorney Paul Hitterman, Deputy Regional Attorney Beth Mattimore, Deputy Assistant General Counsel Rosalind Hill, Deputy Assistant General Counsel David Kelly, and Deputy Assistant General Counsel Dottie Wilson.

(1) Removing all footnotes and placing the information that was in a footnote either in a Note at the beginning of the text or in the body of the section. This was done because the Committee believes that footnotes are often overlooked and because it will facilitate transferring the paragraphs to optional text in a NxGen template (which does not permit insertion of footnotes).

(2) Changing the phrase “on or about” to the shorter phrase “about” which the Committee believes has the same meaning. Users are still encouraged to use the phrase “on” instead of “about” when an exact date is certain.

(3) Changing the phrase “hereinafter called” to a name or phrase in parentheses.

(4) “Wherefore” in the remedial pleadings has been changed to “As.”

### **CHANGES IN ORGANIZATION**

The Committee made some organizational changes intended to facilitate use of the manual and more predictability of locating certain paragraphs. Those changes include:

(5) The Introductory Statement has been reorganized, revised, and renamed “Best Practices.”

(6) The paragraphs about strikes have been moved to the 8(a)(3) section because they deal with actual or potential 8(a)(3) violations.

(7) The Amendment to Complaint language has been moved from the end of the manual to Section 101.10 with the other introductory language paragraphs.

(8) The language describing the employing entity (formerly Section 400) which is generally used has been moved to Section 300 so that it precedes the other paragraphs typically used to describe the employing entity.

(9) The commerce language for direct and indirect inflow and outflow has been organized so that all outflow pleadings are first, followed by all inflow allegations.

(10) The commerce language for gross volume of business has been moved from Section 401.1a, at the beginning of the commerce language, to Section 401.9 because in the past many complaints included that language when it was not appropriate for the type of business, perhaps because the language came first.

(11) The 8(a)(1) pleadings are divided into three types: 8(a)(1) discriminatory conduct; 8(a)(1) statements and conduct; and rules violative of

Section 8(a)(1). Within the 8(a)(1) conduct section, the single and multiple general violations are followed by specific violations appearing in alphabetical order.

(12) The 8(a)(3) allegations are divided into discrimination, strikes, superseniority, union-security agreements with unlawfully assisted or dominated unions, unlawful union security provisions, and hiring hall violations.

(13) The 8(a)(5) and 8(b)(3) introductory paragraphs have been divided into three types: general 9(a) status; 8(f) status; and successor employer situations.

(14) Section 605.4(m), formerly 605.2(f), has been renamed Unilateral Action Not Involving Midterm Modification. It is followed by a new Section 605(n) entitled Unilateral Action – Midterm Modification, which is the 8(d) violation. The Committee placed the two violations together so that drafters would quickly see the difference and select the correct pleading. Having the midterm modification language only appear in the 8(d) section sometimes meant that the incorrect language was selected for the midterm modification.

(15) The 8(b)(1)(A) allegations have been reorganized and divided into four general groups: (a) general allegations (which include duty of fair representation, fines, impeding entrance and exit, promise of benefits, restriction on resignation, threats, and violence); (b) *Beck* allegations; (c) receiving unlawful assistance or domination; and (d) receiving unlawful recognition.

(16) The remedies and special remedies were combined.

### **ADDITIONAL AND REVISED LANGUAGE FOR SPECIFIC PLEADINGS**

(17) Three new sections have been added to provide introductory language for complaints issued after breach of a settlement agreement that contained default language. Section 101.7 provides language for a complaint based on breach of affirmative provisions of a settlement agreement before complaint had issued. Section 101.8 provides language for reissuance of a complaint based on breach of affirmative provisions of a settlement agreement. Section 101.9 provides language for reissuance of a complaint where there was a violation of cease and desist requirements and there is additional conduct, such as new threats or discipline, that must be ruled upon by an ALJ.

(18) The language describing the employing entity has been revised to provide choices for different types of entities, such as limited liability company and limited partnership. A note has also been added stating that the description of the employing entity should justify the use of the standard pled for jurisdiction.

(19) Language has been added in Section 300.2 for pleading a limited partnership (in which the general partner, but not the limited partner, is personally liable).

(20) In the section describing Respondent or the employer, language has been added for use when the entity is an Indian tribe. Section 300.10.

(21) Separate paragraphs are provided in Section 510 for pleading single and multiple agents.

(22) Section 601.1(b) was added for allegations of discrimination when an individual seeks to initiate, induce or prepare for group action or bring group complaints to management's attention.

(23) In Section 601.2(b), language was added for allegations that Respondent "prohibited employees from . . ."

(24) Section 601.2(c) was added for allegations involving denial of access to an off-duty employee.

(25) Section 601.2(e) was revised to add language about allegations regarding distribution of anti-union paraphernalia, asking about return of authorization cards, and soliciting signatures on an anti-union petition.

(26) Section 601.2(f) was added for allegations of prohibiting employees from talking about the union.

(27) Section 601.2(g) was added for allegations of prohibiting employees from wearing pro-union paraphernalia.

(28) Section 601.2(j), formerly 601.10(c), was renamed Requesting Employees to Disclose Information and language was added for allegations of providing employees with the name of an attorney to assist in anti-union activity, and providing more than ministerial assistance in getting rid of a union.

(29) Section 601.2(1)(2) was added for allegations of threatening to arrest non-employees.

(30) Section 601.2(n)(2) was added for Weingarten allegations involving denial of effective union representation.

(31) Language was added in Section 601.2(n)(3) for situations in which an employee was denied the representative of the employee's choice, when that representative was available.

(32) In Section 601.3(b) language was added to allege maintenance of a rule within the 10(b) period.

(33) In Section 603.2(c)(2), formerly Section 600.1(c)(2), Application for Reinstatement on Different Dates, a note was added referencing use of an appendix to the complaint when there are numerous strikers.

(34) Former Section 600.1(c )(3) Applications for Reinstatement Names Attached as an Appendix, was deemed unnecessary and was deleted.

(35) Section 604 was revised to add expanded alleged reasons for the unlawful action, including because the employee(s) was named in a charge; intended to file a charge; threatened to file a charge; cooperated in a Board investigation; consulted with the Board; attended a Board proceeding; or filed a representation [decertification] petition with the Board.

(36) Section 605.4(g) has been revised to include language for a delay in providing information.

(37) Section 605.4(j), formerly 605.1, was renamed Refusal to Recognize and Bargain – General and was revised to include both a request for recognition and a refusal to bargain. Previously this section included only the request for recognition.

(38) The introductory paragraphs for the 8(b)(3) allegations have been changed to mirror the 8(a)(5) allegations and are divided into 9(a) status, 8(f) status, and successor status.

(39) Section 810.5 and 810.6 were deleted because these violations were eliminated by *Alexandria Clinic*, 339 NLRB 1262 (2003).

(40) Sections 1000.6 and 1000.7, remedial paragraphs seeking reimbursement for excess taxes and reporting backpay to Social Security in accordance with GC Memorandum 11-08 have been added.

(41) Former Remedy Example 5, which provided an expungement remedy for pretext discharge cases, was deleted because it was determined that the Board's current expungement remedy made this special pleading unnecessary.

/s/  
A. P.

cc: NLRBU

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